NO. 13-20-00125-CV
(CONSOLIDATED WITH: NO. 13-20-00126-CV; NO. 13-20-00127-CV)

In the Thirteenth Court of Appeals
Corpus Christi, Texas

Dr. Lalitha Madhav Janaki,
Appellant-Plaintiff,

v.

C.H. Wilkinson Physician Network d/b/a CHRISTUS Physician Group, CHRISTUS Spohn Hospital Corpus Christi, CHRISTUS Spohn Hospital Corpus Christi – Shoreline, CHRISTUS Spohn Cancer Center – Calallen, and CHRISTUS Spohn Cancer Center – Shoreline,
Appellees-Defendants.

On Appeal From Cause No. 2017-DCV-4930-G in the 319th Judicial District Court of Nueces County, Texas / Honorable David Stith, Presiding Judge

APPELLEES' RESPONSE BRIEF

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 38.1, Appellees supplement Appellant's list of parties and counsel to add the following appellate counsel for Appellees: Eric J. Hoffman, Norton Rose Fulbright US LLP, 98 San Jacinto Blvd., Suite 1100, Austin, Texas 78701-4255.

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RECORD REFERENCES

The record on appeal is composed of one volume of the Clerk's Record. The Clerk's Record will be abbreviated "CR" and will be cited by reference to the appropriate page number within the single-volume transcript (*e.g.*, CR 26). The Reporter's Record consists of three volumes of transcription of an initial in-person hearing, and a telephonic continuation of that hearing, on Appellees' respective Motions for Summary Judgment. The Reporter's Record will be abbreviated "RR" followed by the volume number (*e.g.*, RR2), and will be cited by reference to the appropriate page number within each volume of transcription (*e.g.*, "RR2 10" refers to the tenth page of the second volume of the Reporter's Record).

Appellant's Appendix will be cited as "Appellant's Appx. Tab ___", followed by the corresponding tab letter (*e.g.*, Appellant's Appx. Tab A). Selected documents are included in Appellees' Appendix, which will be cited as "Appellees' Appx. Tab ___", followed by the corresponding tab number (*e.g.*, Appellees' Appx. Tab 1). Appellant's Opening Brief will be abbreviated "Open. Br." and will be cited by reference to the appropriate page number.

STATEMENT OF THE CASE

This appeal arises out of allegations of retaliation under Section 161.134 of the Texas Health and Safety Code brought by Appellant-Plaintiff Dr. Lalitha Madhav Janaki ("Dr. Janaki") against Appellees-Defendants C.H. Wilkinson

Physician Network ("C.H. Wilkinson"); CHRISTUS Spohn Hospital Corpus Christi and CHRISTUS Spohn Hospital Corpus Christi – Shoreline (collectively, the "Hospital Defendants"); and CHRISTUS Spohn Cancer Center – Calallen and CHRISTUS Spohn Cancer Center – Shoreline (collectively, the "Cancer Center Defendants") after the termination of her employment by C.H. Wilkinson. All five Appellees-Defendants are collectively referred to as the "Healthcare Defendants." Texas Health and Safety Code Section 161.134 prohibits hospitals, mental health facilities, and treatment facilities from retaliating against an employee for reporting a violation of law. *Id.* § 161.134(a); Appellant's Appx. Tab D.

The Healthcare Defendants respectively filed three Motions for Summary Judgment. CR 30-55, 56-80, 81-105. C.H. Wilkinson argued it was not a hospital, mental health facility, or treatment facility as defined by the Texas Health and Safety Code. CR 30, 33-39. Because Section 161.134 applies only to claims against hospitals, mental health facilities, or treatment facilities, C.H. Wilkinson argued, Dr. Janaki's cause of action against C.H. Wilkinson failed as a matter of law. CR 30-31, 33-39.

The Hospital Defendants and the Cancer Center Defendants argued, respectively, that Dr. Janaki was never employed by the Hospital Defendants or the Cancer Center Defendants. CR 56-57, 59-62, 81-82, 84-87. Because Section 161.134 applies only to claims made by employees, the Hospital Defendants and

Cancer Center Defendants argued, Dr. Janaki's causes of action against them failed as a matter of law. CR 56-57, 59-62, 81-82, 84-87.

Dr. Janaki responded to each motion, CR 106-120, 121-135, 174-188, and the Healthcare Defendants replied. CR 136-154, 155-173, 189-207. On September 12, 2019, the trial court held an in-person hearing on the motions, RR2, and a continuation of the hearing via telephone on September 26, 2019. RR3. At the telephonic hearing, the trial court requested additional briefing regarding the potential applicability of the "single integrated enterprise" theory, a legal theory that Dr. Janaki requested the court to apply. RR3 22-24. The parties respectively submitted additional briefing shortly thereafter. CR 208-241, 242-286. The trial court granted each motion on February 4, 2020. CR 287-288, 289-290, 291-292; Appellant's Appx. Tabs A-C. This appeal followed. CR 293-294.

STATEMENT REGARDING ORAL ARGUMENT

The Healthcare Defendants respectfully submit that oral argument is not necessary because this Court can and should affirm the trial court's judgment based on the plain meaning of Section 161.134 of the Texas Health and Safety Code.

However, in the event this Court grants oral argument, the Healthcare Defendants reserve the right to participate.[1]

ISSUE PRESENTED

Did the trial court err in refusing to extend the "single integrated enterprise" theory of liability to Section 161.134 of the Texas Health and Safety Code?

STATEMENT OF FACTS[2]

This case involves allegations of retaliation under Section 161.134 of the Texas Health and Safety Code. CR 48-49. Dr. Lalitha Madhav Janaki is a radiation oncologist practicing in Nueces County.[3] CR 43-44. Dr. Janaki was employed by C.H. Wilkinson for approximately three years until she was terminated in August 2017. CR 43-44. Dr. Janaki practiced as a radiation oncologist at the Cancer Center

[1] The Healthcare Defendants include the note "Oral Argument Requested" on the cover of this brief to avoid any potential waiver of their right to participate at oral argument, if granted. *See* TEX. R. APP. P. 39.7 ("A party desiring oral argument must note that request on the front cover of the party's brief. A party's failure to request oral argument waives the party's right to argue.").

[2] In her Opening Brief, Dr. Janaki makes several factual assertions based on citations to Dr. Janaki's counsel's oral argument as transcribed in the Reporter's Record. Open. Br. at 2, 5, 7. The Healthcare Defendants object to this Court's consideration of any such assertions to the extent they are offered to prove the truth of the statements asserted. To the extent the Healthcare Defendants dispute the accuracy of specific factual assertions in Dr. Janaki's statement of facts and those assertions are relevant to an issue in this appeal, the Healthcare Defendants—in order to avoid unnecessary duplication—will address the accuracy of those assertions in the argument section of this brief.

[3] The statement of facts is drawn largely from allegations in Dr. Janaki's Original Petition, in addition to the Healthcare Defendants' summary judgment evidence. The Healthcare Defendants do not concede the accuracy of Dr. Janaki's allegations and recite them herein solely to detail the allegations upon which her lawsuit is based.

Defendants' facilities during this time. CR 45.

Dr. Janaki made various reports to CHRISTUS management regarding Medicare fraud, employee errors, and deficient patient care between December 2016 and August 2017. CR 44-47. Dr. Janaki was terminated on August 18, 2017, and was informed by "Defendants"[4] that she was terminated due to her behavior and quality of patient care. CR 48. Dr. Janaki contends such reasons were pretextual. *Id.* Dr. Janaki contends that C.H. Wilkinson operates as a single integrated enterprise with the Hospital Defendants and the Cancer Center Defendants for purposes of liability. CR 44.

During the time period that forms the basis of Dr. Janaki's lawsuit, December 2016 to August 2017, Dr. Janaki was an employee of C.H. Wilkinson.[5] CR 54, 76, 101; *see also* CR 43. C.H. Wilkinson paid Dr. Janaki for her employment; C.H. Wilkinson withheld taxes from Dr. Janaki's wages; and C.H. Wilkinson terminated Dr. Janaki's employment. CR 54, 76, 101. Conversely, Dr. Janaki was not an employee of the Hospital Defendants or the Cancer Center Defendants. CR 80, 105. The Hospital Defendants did not control or direct C.H. Wilkinson with respect to employed physicians' salaries, wages, or other personnel issues, nor did they control

[4] Dr. Janaki refers to "Defendants" collectively with respect to this allegation. CR 48.

[5] The remainder of the statement of facts refers to facts as they existed during such relevant time period.

or direct C.H. Wilkinson with respect to Dr. Janaki's termination. CR 54, 76, 80, 101, 105. Likewise, the Cancer Center Defendants did not control or direct C.H. Wilkinson with respect to employed physicians' salaries, wages, or other personnel issues, nor did they control or direct C.H. Wilkinson with respect to Dr. Janaki's termination. CR 80, 105.

C.H. Wilkinson is a multi-specialty medical group that employs over 40 physicians in the Corpus Christi area. CR 54, 76, 101. C.H. Wilkinson is not a single place of business, and many physicians employed by C.H. Wilkinson do not practice at facilities owned by C.H. Wilkinson. CR 54, 76, 101. Instead, many physicians employed by C.H. Wilkinson obtain privileges to practice medicine at hospitals, outpatient departments, or ambulatory surgery centers not owned by C.H. Wilkinson. CR 54, 76, 101. Dr. Janaki did not practice at any facilities owned by C.H. Wilkinson. CR 54, 76, 101.

C.H. Wilkinson did not operate on a 24-hour basis; did not offer beds for overnight use; did not regularly maintain clinical laboratory services or diagnostic X-ray services; did not admit or discharge patients; and did not offer services, facilities, or beds for individuals who require services more intensive than room, board, personal services, and general nursing care. CR 54, 76, 101. C.H. Wilkinson did not operate a mental health facility; did not operate a center established under Texas Health and Safety Code Chapter 534 that provides mental health services; was

not part of a general hospital in which it diagnosed, treated, and cared for the mentally ill; and was not a hospital or facility designated as a place of commitment by any public entity or authority. CR 54, 76, 101. Finally, C.H. Wilkinson did not operate a program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs, and did not provide any type of drug rehabilitation treatment or services. CR 54, 76, 101.

Based on Dr. Janaki's own concession that she was an employee of C.H. Wilkinson and the evidence outlined above, the Healthcare Defendants respectively moved for summary judgment in July and August 2019. CR 30-55, 56-80, 81-105. After additional briefing and hearing in September and October 2019, CR 106-286, RR2, RR3, the trial court granted each motion on February 4, 2020. CR 287-288, 289-290, 291-292; Appellant's Appx. Tabs A-C. This appeal followed. CR 293-294.

SUMMARY OF THE ARGUMENT

It is undisputed that Dr. Janaki was an employee of C.H. Wilkinson and was not an employee of the Hospital Defendants or the Cancer Center Defendants. It is equally undisputed that C.H. Wilkinson was not a hospital, mental health facility, or treatment facility as defined by the Texas Health and Safety Code. Because Section 161.134 applies only to claims made against hospitals, mental health facilities, or treatment facilities, the trial court's order granting summary judgment to C.H.

Wilkinson must be affirmed. Likewise, because Section 161.134 applies only to claims made by employees, the trial court's orders granting summary judgment to the Hospital Defendants and the Cancer Center Defendants must be affirmed.

In apparent recognition of these fatal defects in Dr. Janaki's claims, Dr. Janaki argues that, under the "single integrated enterprise" theory, C.H. Wilkinson, the Hospital Defendants, and the Cancer Center Defendants should be viewed as a single employer for the purposes of liability. Specifically, Dr. Janaki argues that, under the single integrated enterprise theory, the trial court should have ascribed C.H. Wilkinson's employer status to the Hospital Defendants and the Cancer Center Defendants, and should have ascribed the Hospital Defendants' and Cancer Center Defendants' purported statuses as hospitals to C.H. Wilkinson. Dr. Janaki argues that summary judgment evidence submitted by her raised a genuine issue of material fact as to whether the Healthcare Defendants constitute a single employer.

However, the single integrated enterprise theory is inapplicable to claims brought under Section 161.134. To the contrary, to apply such a theory to Section 161.134 would represent an unprecedented expansion of its scope. Therefore, the Court should reject Dr. Janaki's invitation to expand Section 161.134 beyond its plain meaning.

In the alternative, even if the single integrated enterprise theory does apply, portions of Dr. Janaki's summary judgment evidence are conclusory, and therefore

inadmissible. The remainder of Dr. Janaki's summary judgment evidence fails to raise a genuine issue of material fact regarding whether the Healthcare Defendants constitute a "single employer" for purposes of Section 161.134 liability.

Consequently, the Healthcare Defendants respectfully request that this Court affirm the trial court's orders granting the Healthcare Defendants' Motions for Summary Judgment.

ARGUMENT

I. Standard of Review

A party is entitled to summary judgment under Texas Rule of Civil Procedure 166a(c) if the party establishes there is no genuine issue of material fact so that the party is entitled to judgment as a matter of law. *See W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005) (citation omitted). A defendant that conclusively negates at least one essential element of a plaintiff's cause of action is entitled to summary judgment. *See Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508-09 (citing *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995)). If the defendant produces evidence demonstrating summary judgment is proper, "the burden shifts to the plaintiff to present evidence creating a fact issue." *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996) (citation omitted). This Court reviews a trial court's decision to grant a motion for summary judgment *de novo*. *Tex. Mun. Power Agency v. Public Utility Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2007).

When the issue requires interpretation of a statute, the standard of review is also *de novo*. *See Long v. Castle Tex. Prod. Ltd. P'ship*, 426 S.W.3d 73, 78 (Tex. 2014) (citing *Morris v. Aguilar*, 369 S.W.3d 168, 171 n.4 (Tex. 2012)). In conducting this analysis, the appellate court must enforce the statute "as written" and "refrain from rewriting text that lawmakers chose." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009). The court is to limit its analysis to the words of the statute and apply the plain meaning of the text unless a "different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results." *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) (citation and internal quotation marks omitted). The court is also required to consider the act as a whole, not its provisions in isolation, *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999) (citation omitted), and "consider the objective the Legislature sought to achieve through the statute, as well as the consequences of a particular construction." *HCBeck, Ltd. v. Rice*, 284 S.W.3d 349, 352 (Tex. 2009) (citing *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004); TEX. GOV'T CODE § 311.023(1), (5)).

II. The Trial Court Did Not Err in Granting the Healthcare Defendants' Motions for Summary Judgment Because the Healthcare Defendants Conclusively Negated An Essential Element of Dr. Janaki's Claims.

Section 161.134 of the Texas Health and Safety Code prohibits retaliation against employees of hospitals, mental health facilities, and treatment facilities who

report "a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse." TEX. HEALTH & SAFETY CODE § 161.134(a) (entitled "Retaliation Against Employees Prohibited"). This statute, like other statutes protecting employees from retaliatory discharge, is an exception to the common law doctrine of employment at will. *See Dunn v. Happy Hill Farm Academy/Home*, No. 10-12-00197-CV, 2013 WL 4767528, at *3 (Tex. App.—Waco Sept. 5, 2013, pet. denied) (mem. op.) (citing *Coffee Prods. Co. v. Cazarez*, 937 S.W.2d 444, 453 (Tex. 1996)). Where a statute "creates a liability unknown to the common law, the statute will be strictly construed in the sense that it will not be extended beyond its plain meaning or applied to cases not clearly within its purview." *Cazarez*, 937 S.W.2d at 444 (citation and internal quotation marks omitted).

The threshold questions on appeal are (1) whether Texas Health and Safety Code Section 161.134 applies to C.H. Wilkinson and (2) whether Dr. Janaki was an employee of the Hospital Defendants or the Cancer Center Defendants. Because the undisputed facts, the plain language of the statute, and applicable case law dictate the answers to both questions are "no," the trial court properly granted the Healthcare Defendants' Motions for Summary Judgment. *See Fernandez*, 315 S.W.3d at 508.

A. The Trial Court Did Not Err in Granting C.H. Wilkinson's Motion for Summary Judgment Because Texas Health and Safety Code Section 161.134 Does Not Apply to C.H. Wilkinson.

To prove a retaliatory discharge claim under Section 161.134, Dr. Janaki was required to show she was an employee of a hospital, mental health facility, or treatment facility. *See Barron v. Cook Children's Health Care Sys.*, 218 S.W.3d 806, 810 (Tex. App.—Fort Worth 2007, no pet.) (citing TEX. HEALTH & SAFETY CODE § 161.134(a)); *see id.* at 808 ("The plain language of the statute limits its application to three types of entities—hospitals, mental health facilities, and treatment facilities.").[6] It is undisputed that Dr. Janaki was an employee of C.H. Wilkinson. CR 43, 54, 76, 101. However, the summary judgment evidence conclusively demonstrates C.H. Wilkinson was not a hospital, mental health facility, or treatment facility during the relevant timeframe.[7] Therefore, C.H. Wilkinson is not subject to Section 161.134(a) and Dr. Janaki's claim against C.H. Wilkinson fails as a matter of law.

[6] The remaining elements of Section 161.134 required Dr. Janaki to show: (2) she reported a violation of law; (3) the report was made to a supervisor, an administrator, a state regulatory agency, or a law enforcement agency; (4) the report was made in good faith; and (5) she was suspended, terminated, disciplined, or otherwise discriminated against. *Barron*, 218 S.W.3d at 810 (citing TEX. HEALTH & SAFETY CODE § 161.134(a)). As the summary judgment evidence conclusively negates the first element, the Healthcare Defendants did not address the remaining elements in their Motions for Summary Judgment.

[7] Dr. Janaki does not dispute that C.H. Wilkinson, standing alone, is not a hospital, mental health facility, or treatment facility for which liability under Texas Health and Safety Code Section 161.134 can be based.

1. C.H. Wilkinson was Not a Hospital as Defined by the Texas Health and Safety Code.

Chapter 161 of the Texas Health and Safety Code defines "hospital" as having the meaning assigned by Texas Health and Safety Code Section 241.003, *see id.* § 161.131(3), which defines "hospital" as including "a general hospital and a special hospital." *Id.* § 241.003(7). A "general hospital" is defined as an establishment that:

> offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

Id. § 241.003(5). Similarly, a "special hospital" is defined as an establishment that:

> offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care; has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment; has a medical staff in regular attendance; and maintains records of the clinical work performed for each patient.

Id. § 241.003(15). "Establishment" is not defined within the statute and therefore must be given its ordinary meaning. *See Tijerina v. City of Tyler*, 846 S.W.2d 825, 827 (Tex. 1992) (citation omitted). An "establishment" is "an institution or place of business." BLACK'S LAW DICT. (Westlaw) (11th ed. 2019).

At the outset, C.H. Wilkinson is not an "establishment." C.H. Wilkinson is a

multi-specialty medical group that employs over 40 physicians in the Corpus Christi area. CR 54. C.H. Wilkinson is not a single place of business, and many physicians employed by C.H. Wilkinson—like Dr. Janaki before she was terminated—do not practice at C.H. Wilkinson-owned facilities. *Id.* Instead, many physicians employed by C.H. Wilkinson obtain privileges to practice medicine at hospitals, outpatient departments of the hospitals, or ambulatory surgery centers not owned by C.H. Wilkinson. *Id.*

Next, during the relevant timeframe, C.H. Wilkinson did not operate on a 24-hour basis, did not offer beds for overnight use, and did not regularly maintain clinical laboratory services or diagnostic X-ray services. *Id.* C.H. Wilkinson did not admit or discharge patients. *Id.* And C.H. Wilkinson did not offer services, facilities, or beds for individuals who require services more intensive than room, board, personal services, and general nursing care. *Id.*

Outside the context of a Section 161.134 claim, at least two Texas courts have found healthcare defendants were not "hospitals" under Section 241.003 because they either did not provide beds for use for more than 24 hours, *see E. Tex. Med. Ctr. Inst. v. Anderson*, 991 S.W.2d 55, 64 (Tex. App.—Tyler 1998, pet. denied), or operated during limited hours. *See Finley v. Steenkamp*, 19 S.W.3d 533, 542 n.6 (Tex. App.—Fort Worth 2000, no pet.) ("[Defendant] is a dialysis center that operates during limited hours and, thus, is neither a general hospital nor a special

hospital." (citing TEX. HEALTH & SAFETY CODE § 241.003(5), (15))). Similar to the healthcare providers in *Anderson* and *Finley*, the summary judgment evidence conclusively demonstrates C.H. Wilkinson did not provide beds for use for more than 24 hours and operated only during limited hours. The summary judgment evidence further demonstrates C.H. Wilkinson did not constitute a "hospital" for the other reasons outlined above. Accordingly, C.H. Wilkinson was neither a general nor a special hospital as defined by Texas Health and Safety Code Section 241.003, and is not subject to Section 161.134's anti-retaliation provisions by virtue of "hospital" status.

2. C.H. Wilkinson was Not a Mental Health Facility as Defined by the Texas Health and Safety Code.

Chapter 161 defines "mental health facility" as having the meaning assigned by Texas Health and Safety Code Section 571.003. *See id.* § 161.131(7). Section 571.003 defines "mental health facility" as

> an inpatient or outpatient mental health facility operated by the department,[8] a federal agency, a political subdivision, or any person; a community center or a facility operated by a community center; that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

[8] "Department" means the Texas Department of State Health Services. *See* TEX. HEALTH & SAFETY CODE § 571.003(5).

Id. § 571.003(12).

"Community center" means a center established under Texas Health and Safety Code Chapter 534 that provides mental health services. *Id.* § 571.003(4). "Mental illness" means "an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability," that "substantially impairs a person's thought, perception of reality, emotional process, or judgment[,]" or "grossly impairs behavior as demonstrated by recent disturbed behavior." *Id.* § 571.003(14).

During the relevant timeframe, C.H. Wilkinson did not operate a mental health facility, CR 54; did not operate a center established under Texas Health and Safety Code Chapter 534 that provides mental health services, *id.*; was not part of a general hospital in which it diagnosed, treated, and cared for the mentally ill, *id.*; and was not a hospital or facility designated as a place of commitment by any public entity or authority. *Id.* Accordingly, C.H. Wilkinson was not a "mental health facility" as defined by Texas Health and Safety Code Section 241.003, and is not subject to Section 161.134's anti-retaliation provisions by virtue of "mental health facility" status.

3. C.H. Wilkinson was Not a Treatment Facility as Defined by the Texas Health and Safety Code.

Chapter 161 defines "treatment facility" as having the meaning assigned by Texas Health and Safety Code Section 464.001. *See id.* § 161.131(10). Chapter 464

is entitled "Facilities Treating Alcoholics and Drug-Dependent Persons," and Subchapter A is entitled "Regulation of Chemical Dependency Treatment Facilities." Section 464.001, located under Subchapter A, first defines "treatment" as "a planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs." *Id.* § 464.001(4). The statute next defines "treatment facility" as: a public or private hospital; a detoxification facility; a primary care facility; an intensive care facility; a long-term care facility; an outpatient care facility; a community mental health center; a health maintenance organization; a recovery center; a halfway house; an ambulatory care facility; or "any other facility that offers or purports to offer treatment." *Id.* § 464.001(5).

In light of the definition of "treatment," such types of facilities are considered "treatment facilities" under Section 464.001(5) ***only*** if they have a "'a planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.'" *Barron*, 218 S.W.3d at 809-10 (quoting TEX. HEALTH & SAFETY CODE § 464.001(4)); *see also Nichols v. HealthSouth Corp.*, No. Civ.A.3:00-CV-1487-P, 2001 WL 1081288, at *3 (N.D. Tex. Sept. 12, 2001) ("'[T]reatment,' and consequently 'treatment facility,' are limited to encompass only those facilities wherein 'planned, structured, and organized programs designed to initiate and promote a person's chemical-free status

or to maintain the person free of illegal drugs take place.'" (quoting TEX. HEALTH & SAFETY CODE § 464.001(4))).

During the relevant timeframe, C.H. Wilkinson did not operate a program "designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs." CR 54. Indeed, C.H. Wilkinson did not provide any type of drug rehabilitation treatment or services. *Id.* Accordingly, C.H. Wilkinson was not a "treatment facility" as defined by Texas Health and Safety Code Section 241.003, and is not subject to Section 161.134's anti-retaliation provisions by virtue of "treatment facility" status. *Cf. Barron*, 218 S.W.3d at 808-11 (affirming trial court's grant of traditional summary judgment to physician group and healthcare system on plaintiff's Section 161.134 claim where evidence demonstrated defendants were not treatment facilities and plaintiff conceded defendants were not hospitals or mental health facilities); *Nichols*, 2001 WL 1081288, at *3-6 (granting clinic summary judgment under Federal Rules of Civil Procedure on plaintiff's Section 161.134 claim where plaintiff failed to show clinic was a treatment facility and plaintiff conceded clinic was not a hospital or mental health facility).

Because the summary judgment evidence conclusively demonstrates Dr. Janaki was not an employee of a "hospital, mental health facility, or treatment facility," Dr. Janaki's claim against C.H. Wilkinson fails as a matter of law.

B. The Trial Court Did Not Err in Granting the Hospital Defendants' and the Cancer Center Defendants' Motions for Summary Judgment Because Dr. Janaki was Not an Employee of the Hospital Defendants or the Cancer Center Defendants.

As noted above, to prove a retaliatory discharge claim under Section 161.134, Dr. Janaki was required to show she was an employee of a hospital, mental health facility, or treatment facility. *See Barron*, 218 S.W.3d at 810 (citing TEX. HEALTH & SAFETY CODE § 161.134(a)); *see also Austin v. HealthTrust-The Hosp. Co.*, 967 S.W.2d 400, 402 (Tex. 1998) ("Section 161.134 of the Health and Safety Code provides a specific cause of action against a ***hospital-employer*** who has retaliated against an ***employee*** for reporting a violation of the law to a supervisor." (emphases added)). As the evidence conclusively demonstrates Dr. Janaki was not an employee of a hospital, mental health facility, or treatment facility, Dr. Janaki's claims against the Hospital Defendants and the Cancer Center Defendants fail as a matter of law.

Dr. Janaki was not an employee of either Hospital Defendant or Cancer Center Defendant. To the contrary, Dr. Janaki conceded in her Petition that she was employed by C.H. Wilkinson. CR 43. A party may "plead itself out of court by pleading facts that affirmatively negate its cause of action." *Trail Enters., Inc. v. City of Hous.*, 957 S.W.2d 625, 632 (Tex. App.—Hous. [14th Dist.] 1997, pet. denied) (citing *Tex. Dep't of Corr. v. Herring*, 513 S.W.2d 6, 9 (Tex. 1974)). Accordingly, Dr. Janaki's own Petition conclusively negates any claim by Dr. Janaki that she was an employee of any of the Hospital Defendants or Cancer Center Defendants.

Summary judgment evidence further demonstrates Dr. Janaki was not an employee of either of the Hospital Defendants or the Cancer Center Defendants. First, C.H. Wilkinson admits it employed Dr. Janaki. CR 54, 76, 101. C.H. Wilkinson paid Dr. Janaki for her employment, CR 54, 76, 101; C.H. Wilkinson withheld taxes from her wages, CR 54, 76, 101; and C.H. Wilkinson terminated Dr. Janaki's employment. CR 54, 76, 101.

Conversely, neither the Hospital Defendants nor the Cancer Center Defendants employed Dr. Janaki. CR 80, 105. The Hospital Defendants did not control or direct C.H. Wilkinson with respect to salaries, wages, or other personnel issues, including Dr. Janaki's termination. CR 80. Indeed, the Hospital Defendants are statutorily prohibited from employing physicians to practice medicine under the corporate practice of medicine doctrine. *See Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 678 n.1 (Tex. 2017) ("[S]tate law prohibits corporations comprised of lay persons from employing physicians to practice medicine and receiving fees for the treatment those physicians provide." (citation omitted)). Likewise, the Cancer Center Defendants did not control or direct C.H. Wilkinson with respect to salaries, wages, or other personnel issues, including Dr. Janaki's termination. CR 105.

Because the summary judgment evidence conclusively demonstrates Dr. Janaki was not an employee of either the Hospital Defendants or the Cancer Center

Defendants, Dr. Janaki's claims against the Hospital Defendants and Cancer Center Defendants fail as a matter of law.

C. The Single Integrated Enterprise Theory is Inapplicable to This Case.

Having established that C.H. Wilkinson employed Dr. Janaki and that C.H. Wilkinson is not a hospital, mental health facility, or treatment facility for which liability under Texas Health and Safety Code Section 161.134 can be based, the Court's inquiry should end there. Nevertheless, Dr. Janaki argues that, under the "single integrated enterprise" theory, the trial court should have ascribed C.H. Wilkinson's status as an employer to the Hospital Defendants and the Cancer Center Defendants, and should have ascribed the Hospital Defendants' and Cancer Center Defendants' purported statuses as hospitals to C.H. Wilkinson.[9] Open. Br. at 8-10, 12-30.

Under the single integrated enterprise theory, "superficially distinct entities may be exposed to liability upon a finding that they represent a single, integrated enterprise: a single employer." *Trevino v. Celanese Corp.*, 701 F.2d 397, 404 (5th

[9] The Cancer Center Defendants dispute they are "hospitals" under Texas Health and Safety Code 161.134. However, as the Cancer Center Defendants moved for summary judgment solely on the basis that they were not Dr. Janaki's employer, whether the Cancer Center Defendants constitute "hospitals" under Section 161.134 is outside of the Court's present inquiry.

Cir. 1983).[10] However, the single integrated enterprise theory is inapplicable to claims brought under Section 161.134, and to apply such a theory to Section 161.134 would represent an unprecedented expansion of its scope. Therefore, the Court should reject Dr. Janaki's invitation to expand Section 161.134 beyond its plain meaning.

1. Dr. Janaki's Request that This Court Expand Section 161.134 Beyond its Plain Meaning is Unprecedented and Disregards Canons of Statutory Construction.

It is undisputed that the single integrated enterprise theory has never been applied to a Section 161.134 claim. *Cf.* Open. Br. at 15-16. Therefore, to accept Dr. Janaki's theory of liability would require this Court to extend Section 161.134 liability beyond the limited constraints of the employee-employer relationship, and beyond the context of hospitals, mental health facilities, or treatment facilities.

Such an extension would violate the canon of statutory construction that when interpreting a statute, a court's "primary objective is to ascertain and give effect to the Legislature's intent without unduly restricting or expanding the Act's scope." *Greater Hous. P'ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015) (citation omitted). If a statute is unambiguous, rules of construction or other extrinsic aids cannot be

[10] Factors considered in determining whether distinct entities constitute a single integrated enterprise are (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. *Trevino*, 701 F.2d at 404 (citations omitted).

used to create ambiguity. *Fitzgerald*, 996 S.W.2d at 866-67. Moreover, a court may add words into a statutory provision "only when necessary to give effect to clear legislative intent." *Id.* at 867. Even then, "only truly extraordinary circumstances showing unmistakable legislative intent should divert" a court from enforcing the statute as written. *Id.* Not only do no such extraordinary circumstances exist in this case, but as explained below, Chapter 161's statutory scheme reveals the Legislature's clear intent to limit Section 161.134's applicability to retaliation claims brought by actual employees.

2. The Chapter 161 Framework Indicates the Legislature's Intention to Limit Section 161.134 to Employee-Employer Relationships.

In determining the Legislature's intent, courts look "first and foremost" in the statutory text, *Paxton*, 468 S.W.3d at 58, and derive the Legislature's intent "from the plain meaning of the text construed in light of the statute as a whole." *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 572 (Tex. 2016) (citation omitted). Undefined terms "are typically given their ordinary meaning, but if a different or more precise definition is apparent from the term's use in the context of the statute, we apply that meaning." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (citation omitted). "However, we will not give an undefined term a meaning that is out of harmony or inconsistent with other terms in the statute." *State of Tex. v. $1,760.00 in U.S. Currency*, 406 S.W.3d 177, 180 (Tex. 2013) (citation omitted).

Therefore, even if an undefined term has multiple meanings, the definition most consistent within the context of the statutory scheme applies. *Id.* at 180-81 (citation omitted).

In conducting a statutory analysis, courts "presume the Legislature chose statutory language deliberately and purposefully." *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014) (citation omitted). Courts endeavor to interpret each word, phrase, and clause in a manner that gives meaning to them all. *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 513 S.W.3d 487, 493 (Tex. 2017). Accordingly, courts "read statutes as a whole so as to render no part inconsistent, superfluous, or devoid of meaning," *id.* (citation omitted), and consider a provision's role in the broader statutory scheme. *20801, Inc. v. Parker*, 249 S.W.3d 392, 396 (Tex. 2008); *see also Fitzgerald*, 996 S.W.2d at 865-66 (in conducting statutory analysis, "we look at the entire act, and not a single section in isolation." (citation omitted)).

Chapter 161, Subchapter L, of the Texas Health and Safety Code, entitled "Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities", was enacted in 1993 to require reporting by healthcare professionals of abuse or neglect, or illegal, unprofessional, or unethical conduct, occurring at hospitals, mental health facilities, and treatment facilities. *See* TEX. HEALTH & SAFETY CODE § 161.132(a)-(b); Appellees' Appx. Tab 1. It requires such healthcare

facilities to post signage regarding such reporting duties, TEX. HEALTH & SAFETY CODE § 161.132(e), requires applicable state healthcare regulatory agencies to promulgate rules to provide for appropriate disciplinary action for healthcare professionals who fail to comply with such reporting duties, *id.* § 161.132(f), provides immunity from civil or criminal liability to individuals who make a good faith report, *id.* § 161.132(g), and imposes annual inservice training requirements, *id.* § 161.133(a), among other requirements. And, of course, it prohibits retaliation against individuals who make good faith reports under the statute. *See id.* §§ 161.134, 161.135.

Throughout the statute, Chapter 161 distinguishes between employees and nonemployees out of apparent recognition that healthcare professionals often are not employees of the healthcare facility in which they practice. *Cf. Hansen*, 525 S.W.3d at 678 n.1; *see also Tex. Health Ins. Risk Pool v. Sw. Serv. Life Ins. Co.*, 272 S.W.3d 797, 802 (Tex. App.—Austin 2008, no pet.) ("We must presume that the legislature is aware of how a particular industry operates when passing laws regulating that industry." (citations omitted)).

For example, Section 161.132(a), requiring reports of abuse or neglect, applies to "a person, including an employee, volunteer, ***or other person associated with***" the types of healthcare facilities subject to the statute's requirements. *Id.* (emphasis added). Similarly, Section 161.132(b), requiring reports regarding illegal,

unprofessional, or unethical conduct, applies to "[a]n employee of ***or other person associated with*** an [applicable facility], ***including a health care professional*** . . . ." *Id.* (emphases added). Section 161.132(b) further recognizes this distinction with respect to the persons who may be engaging in improper conduct by distinguishing between "an employee of ***or health care professional associated with the facility*** . . . ." *Id.* (emphasis added).

The signage requirement, which requires signage regarding the duty to report to be displayed in a "public area of the facility that is readily available to patients, ***residents***, volunteers, employees, and visitors[,]" likewise recognizes this distinction. *Id.* § 161.132(e) (emphasis added). And the inservice training requirement is specifically "designed to assist employees ***and health care professionals associated with the facility***" in identifying patient abuse or neglect and improper conduct. *Id.* § 161.133(a) (emphasis added).

While Section 161.134 is limited to prohibiting retaliation against employees and clearly contemplates the existence of an employment relationship, *see id.* § 161.134(a), Section 161.135 addresses retaliation against nonemployees. *See id.* § 161.135 (entitled "Retaliation Against Nonemployees Prohibited."). Specifically, Section 161.135(a) provides that a hospital, mental health facility, or treatment facility "may not retaliate ***against a person who is not an employee for reporting a violation of law*** . . . ." *Id.* (emphasis added). Section 161.135 creates a rebuttable

presumption of retaliation if the hospital, mental health facility, or treatment facility "transfers, disciplines, suspends, terminates, or otherwise discriminates against the person" who made a good faith report, *id.* § 161.135(c)(1)(B), or "transfers, discharges, punishes, or restricts ***the privileges of the person***" who made a good faith report, *id.* § 161.135(c)(1)(D) (emphasis added), within 60 days after the date the plaintiff made the good faith report. *Id.* § 161.135(c)(1).[11]

Sections 161.132, .133, .134, and .135 are "obviously related[.]" *El Paso Healthcare Sys., Ltd. v. Murphy*, 518 S.W.3d 412, 418 (Tex. 2017).[12] Reading these provisions together, it is clear the Legislature intended to impose reporting obligations on employees and nonemployees alike, intended to distinguish between employees and non-employed healthcare professionals, and intended to limit the scope of Section 161.134 to retaliation claims brought by employees. To conclude otherwise—that the term "employee" as used in Section 161.134 can apply to practitioners like Dr. Janaki if the single integrated enterprise factors are met—would improperly render superfluous the statute's repeated attempts to distinguish

[11] Section 161.135 also creates a rebuttable presumption of retaliation in other instances not applicable to this case. *See* TEX. HEALTH & SAFETY CODE § 161.135(c)(1)(A), (C); 161.135(c)(2).

[12] In *Murphy*, the Texas Supreme Court considered whether a plaintiff pursuing a Section 161.135 claim was required to prove that the reported conduct violated the law. 518 S.W.3d at 417. Applying rules of statutory construction, the Court considered the language of Sections 161.132, .133, and .134 and determined the statute does not require a plaintiff to prove that the reported conduct violated the law, but instead permits a plaintiff to sue for retaliation if the plaintiff reported a violation of law in good faith. *Id.* at 418-19.

between employees and "health care professionals associated with the facility." *See* TEX. HEALTH & SAFETY CODE §§ 161.132(b), 161.133(a); *cf. Crosstex Energy Servs.*, 430 S.W.3d at 390 ("We must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous." (citations and internal quotation marks omitted)).

Dr. Janaki inexplicably argues that "the facts of this case do not lend to a binary interpretation of the word employee," Open. Br. at 25, but such a "binary" approach is precisely what the Legislature took in enacting Chapter 161, Subchapter L, of the Texas Health and Safety Code—Section 161.134 prohibits hospitals, mental health facilities, and treatment facilities from retaliating against ***employees***, *id.* § 161.134(a), and Section 161.135 prohibits such entities from retaliating against ***nonemployees***. *Id.* § 161.135(a).

Indeed, the existence of a cause of action under Section 161.135 belies Dr. Janaki's argument that "not applying the [single integrated enterprise] theory would otherwise render the statute meaningless if physicians could never sue the hospitals that clearly act as employers and ultimately not be able to hold them accountable for retaliatory actions." Open. Br. at 25. In enacting Section 161.135, the Legislature clearly intended to provide a cause of action to physicians who allege the hospital in which they practiced, but which was not their employer, retaliated against them for reporting illegal, unprofessional, or unethical conduct. That Dr. Janaki chose not to

avail herself of such a remedy does not require the Court to expand the scope of liability under Section 161.134—an otherwise inapplicable statutory provision—to apply to claims brought by individuals not employed by a hospital, mental health facility, or treatment facility.

3. The Chapter 161 Framework Indicates the Legislature's Intention to Limit Section 161.134 to Hospitals, Mental Health Facilities, and Treatment Facilities.

Dr. Janaki's requested construction of Section 161.134 would serve to not only extend Section 161.134 beyond the employee-employer relationship, but would extend Section 161.134 liability beyond the three limited categories of healthcare facilities subject to Chapter 161, Subchapter L: hospitals, mental health facilities, and treatment facilities. Such a construction not only lacks any case law or statutory support, but directly contradicts the Legislature's clear intent to limit Chapter 161's applicability to these three limited categories of healthcare facilities. In fact, the Legislature provides in ***eleven*** separate instances that the provisions of Chapter 161, Subchapter L, apply only to hospitals, mental health facilities, and treatment facilities. *See* TEX. HEALTH & SAFETY CODE §§ 161.132(a)-(b), (e); 161.133(a); 161.134(a)-(b), (j); 161.135(a)-(b), (h).

Dr. Janaki's construction, if credited, would render superfluous the statute's repeated, specific references to hospitals, mental health facilities, and treatment facilities, in direct violation of the canons of statutory construction. *See Crosstex*

Energy Servs., 430 S.W.3d at 390. If the Legislature intended to subject all health care providers to Section 161.134 liability, it could have easily done so. *Cf. Stoker v. Furr's, Inc.*, 813 S.W.2d 719, 723 (Tex. App.—El Paso 1991, writ denied) ("Had the legislature intended to create a cause of action against any person who in any manner discriminated against any other person because the latter had filed a [workers'] compensation claim, it could have easily said so."). Yet, the Legislature unequivocally limited Section 161.134's applicability to hospitals, mental health facilities, and treatment facilities.

Under Dr. Janaki's construction, ***any*** healthcare entity could fall within the scope of Section 161.134 liability if a plaintiff could show a certain level of interrelatedness with a hospital, mental health facility, or treatment facility. However, as Section 161.134 is an exception to the common law doctrine of employment at will, *see Dunn*, 2013 WL 4767528, at *3, Dr. Janaki's construction would require the Court to impermissibly create new liability in derogation of the common law of at-will employment. *See Fitzgerald*, 996 S.W.2d at 872 (Owen, J., dissenting) (court's proper function "is to construe the statute in a manner that does not create new liability in derogation of the common law unless the statute evinces the Legislature's clear intent to do so." (citing *Smith v. Sewell*, 858 S.W.2d 350, 354 (Tex. 1993))); *see also Cazarez*, 937 S.W.2d at 444.

Dr. Janaki's construction, if credited, would also introduce uncertainty into the law, as healthcare businesses with any level of routine interaction with a hospital system could now find themselves subject to Section 161.134 liability any time they make an adverse employment decision. The Court should decline Dr. Janaki's unsupported and unprecedented invitation to extend Section 161.134 liability to a medical group like C.H. Wilkinson. *Cf. Campus Mgmt., Inc. v. Kimball*, 991 S.W.2d 948, 952 (Tex. App.—Dall. 1999, pet. denied) (rejecting plaintiff's request to extend the law regarding ordinary negligence because "[c]hanges in the law should be left to the Texas Supreme Court or the Texas Legislature." (citations omitted)).

4. Texas and Federal Jurisprudence Applying the Single Integrated Enterprise Theory to Anti-Discrimination Statutes is Inapposite to this Case.

Dr. Janaki's ***only*** basis for arguing that this Court should apply the single integrated enterprise theory to her claims is that Texas courts look to federal case law when interpreting state anti-discrimination laws like the Texas Commission on Human Rights Act ("TCHRA"), and the Fifth Circuit has adopted the single integrated enterprise test when interpreting the meaning of "employer" as used in Title VII of the federal Civil Rights Act. Open. Br. at 15-16. Dr. Janaki argues this Court should look toward federal guidance because "like [the] TCHRA, [TEX. HEALTH & SAFETY CODE § 161.134] was meant to protect employees from discrimination and retaliation in the workplace . . . ." Open. Br. at 16. However,

Dr. Janaki's attempt to expand the scope of Section 161.134 liability is based on an entirely false premise; the TCHRA is directly modeled after Title VII of the Civil Rights Act, *NME Hosps., Inc. v. Rennels*, 994 S.W.2d 142, 144 (Tex. 1999), where Section 161.134 is not.

Indeed, one of the TCHRA's express purposes is to "provide for the execution of the policies of" Title VII and its subsequent amendments. *Rennels*, 994 S.W.2d at 144 (quoting TEX. LAB. CODE § 21.001(1)); *see id.* ("The Act purports to correlate state law with federal law in the area of discrimination in employment." (citations and internal quotation marks omitted)). Therefore, "***in light of the Legislature's express purpose***, [Texas courts] look to analogous federal precedent for guidance when interpreting the [TCHRA]." *Id.* (emphasis added) (citations omitted); *see also Jespersen v. Sweetwater Ranch Apmts.*, 390 S.W.3d 644, 653 (Tex. App.—Dall. 2012, no pet.) ("Although we consider the TCHRA's plain language and state precedent in interpreting the statute, we also look to federal law for guidance ***in situations where the TCHRA and Title VII contain analogous statutory language***." (emphasis added)).

Moreover, the TCHRA does not "expressly require an employment relationship between the employer who violates the statute and the person who is harmed by the violation." *Rennels*, 994 S.W.2d at 146. The TCHRA "uses the term 'person' instead of 'employee,' thus encompassing those who do not maintain a

direct employment relationship with the defendant." *Id.* (citing TEX. LAB. CODE § 21.005). Additionally, by prohibiting retaliation or discrimination by an "employer, labor union, or employment agency," the Legislature has recognized "that those other than the plaintiff's direct employer may, under certain circumstances, be in a position to interfere with a person's employment relationships or access to employment." *Id.* This is similar to Title VII, which uses the term "individual" instead of "employee" and allows a "person claiming to be aggrieved" to file suit. *Id.* at 144 (quoting 42 U.S.C. §§ 2000e-2, 2000e-5).

Section 161.134, on the other hand, is entirely devoid of ***any*** reference to Title VII or any other federal anti-discrimination law, let alone an expressly stated purpose to carry out such laws. Significantly, unlike the TCHRA and Title VII, Section 161.134 expressly requires an employment relationship between the employer who allegedly violated the statute and the employee. *See* TEX. HEALTH & SAFETY CODE § 161.134(a) ("A hospital . . . may not suspend or terminate the ***employment*** of or discipline or otherwise discriminate against an ***employee*** for reporting to the ***employee's*** supervisor, [or] an administrator of the facility . . . a violation of law . . . ." (emphases added)); *see also id.* § 161.134(f) ("[I]t is a rebuttable presumption that the plaintiff's ***employment*** was suspended or terminated, or that the ***employee*** was disciplined or discriminated against, for making a report related to a violation [in certain circumstances]." (emphases

added)); *id.* § 161.134(g) ("A suit . . . may be brought in the district court of the county in which[] the plaintiff was ***employed*** by the defendant . . . ." (emphasis added)); *id.* § 161.134(h) ("A person who alleges a violation . . . must sue . . . before the 180th day after the date the alleged violation occurred or was discovered by the ***employee*** . . . ." (emphasis added)). Contrary to Dr. Janaki's suggestion, Section 161.134 is entirely distinguishable from the TCHRA, and state and federal case law applying the single integrated enterprise theory to discrimination claims is inapposite.[13]

For these reasons, the cases cited by Dr. Janaki are immaterial to the Court's inquiry. Dr. Janaki cites to *Johnson v. El Paso Pathology Group, P.A.* for the proposition that a hospital system and physician group can be held liable as a "joint employer," Open. Br. at 17-18 (citing *Johnson*, 868 F. Supp. 852, 860-61 (W.D. Tex. 1994)), but Dr. Janaki concedes *Johnson* involved a Title VII claim. *Id.* at 17. *Johnson* is distinguishable for an additional reason. Although the court in *Johnson* rejected the hospital's argument that the plaintiff could not legally have been an employee of the hospital because of Texas's corporate practice of medicine doctrine, 868 F. Supp. at 859-60 (citation omitted), it expressly based its holding on the fact

[13] Indeed, a search of the phrase "single integrated enterprise" in Texas state courts, federal courts, and the Fifth Circuit revealed no case law applying the "single integrated enterprise" theory to ***any*** causes of action asserted under the Texas Health and Safety Code.

that the case was a Title VII case: "Employer-employee status under Title VII must be examined in light of the broad remedial purposes of the federal law and cannot be simply determined by reference to particular state employment laws." *Id.* at 859-60. Therefore, state law was not controlling. *Id.* at 859 (citation omitted). In contrast, here, Dr. Janaki has brought only state law claims. Accordingly, *Johnson* is not only uninstructive, but is entirely inapposite to this case.

Dr. Janaki also cites to *Williams v. MMO Behavioral Health Systems, LLC*, an unreported decision from the Eastern District of Louisiana, for the proposition that a hospital and its parent company, a behavioral health system, can be held liable under the *Trevino* single business enterprise factors. Open. Br. at 18-19 (citing *Williams*, No. 16-11650, 2018 WL 5886523, at *1, 7 (E.D. La. Nov. 9, 2018). However, *Williams* involved the application of the single business enterprise theory to claims brought under the federal Age Discrimination in Employment Act ("ADEA"). Unlike Section 161.134 of the Texas Health and Safety Code, the ADEA shares with Title VII "common substantive features and also a common purpose: 'the elimination of discrimination in the workplace.'" *McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 358 (1995) (quoting *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979)); *see also Hardy v. Fleming Food Cos.*, No. CIV. A. H-94-3759, 1996 WL 145463, at *19 (S.D. Tex. Mar. 21, 1996) ("Due to the common purpose of the statutes and the nearly identical substantive provisions, legal

precedent under Title VII has often been applied in actions brought under the ADEA." (citations omitted)). Therefore, *Williams* stands for the entirely unremarkable proposition that a federal court—sitting in a different state—may apply the *Trevino* single integrated enterprise factors to a plaintiff's ADEA claim against a hospital and its parent company.

Similarly, Dr. Janaki cites to *Burton v. Freescale Semiconductor, Inc.* for the proposition that a manufacturer that employed workers through a temporary staffing agency can be considered an "employer" for purposes of the Americans with Disabilities Act ("ADA"). Open. Br. at 26-27 (citing *Burton*, 798 F.3d 222, 227 (5th Cir. 2015)). However, unlike Section 161.134 of the Texas Health and Safety Code, the ADA shares numerous substantive similarities with Title VII: the ADA definition of "employer" mirrors the definition of "employer" in Title VII, *compare* 42 U.S.C. § 12111(5)(A) (under ADA, an "employer" is "a person engaged in an industry affecting commerce who has 15 or more employees . . . , and any agent of such person . . . .") *with* 42 U.S.C. § 2000e(b) (under Title VII, an "employer" is "a person engaged in an industry affecting commerce who has fifteen or more employees . . . , and any agent of such person . . . ."); the term "person" has the same meaning under the ADA as in Title VII, *see* 42 U.S.C. § 12111(7) ("The term[] 'person' . . . shall have the same meaning given such term[] in [Title VII]."); and the ADA "expressly provides that it is to be enforced in the same manner as Title VII."

Appleberry v. Fort Worth Indep. Sch. Dist., No. 4:12-CV-235-A, 2012 WL 5076039, at *4 (N.D. Tex. Oct. 17, 2012) (citing 42 U.S.C. § 12117). As mentioned above, Texas Health and Safety Code Section 161.134 shares no such similarities with Title VII.

Dr. Janaki's reliance on *Burton* is further puzzling because the *Burton* court did not even apply the "single integrated enterprise" theory that Dr. Janaki seeks to apply here; the *Burton* court instead applied the "hybrid economic realities/common law control test." *Burton*, 798 F.3d at 227 (citation omitted). The "hybrid test developed as a means of determining when plaintiffs could be considered employees of business entities, not to ascertain if different entities were so integrated as to constitute a single employer of that plaintiff." *Schweitzer v. Advanced Telemktg. Corp.*, 104 F.3d 761, 764 (5th Cir. 1997). For example, the hybrid test is used in federal discrimination cases when determining whether an independent contractor has a "sufficiently close relationship to a defendant that the defendant should be liable to the contractor for its conduct." *Id.* at 764 n.2. Although the hybrid test is similar to the *Trevino* "single integrated enterprise" test and "will frequently yield the same results, the tests should not be used interchangeably." *Id.* at 764.

Texas courts have echoed Dr. Janaki's confusion; at least seven Texas state courts examining TCHRA claims have applied the hybrid economic realities/common law control test to determine the existence of an employment

relationship, while three Texas state courts have applied the single integrated enterprise test.[14] Adding to the confusion, at least one Texas state court has applied the *Rennels* test, which is used to determine a plaintiff's ***standing*** to assert a TCHRA claim against an entity that was not his or her direct employer, to determine whether three entities constituted a "single integrated enterprise." *Dias v. Goodman Mfg. Co.*, 214 S.W.3d 672, 682 (Tex. App.—Hous. [14th Dist.] 2007, pet. denied) (citing *Rennels*, 994 S.W.2d at 147). Therefore, the lack of clarity regarding which test to apply in determining the existence of an employment relationship among distinct entities provides yet another reason why this Court should decline to extend Section 161.134 liability beyond the narrow confines of an employee-employer relationship with a hospital, mental health facility, or treatment facility.

[14] *Compare Univ. of Tex. at El Paso v. Ochoa*, 410 S.W.3d 327, 331 (Tex. App.—El Paso 2013, pet. denied) (applying hybrid economic realities/common law control test); *Culver v. Gulf Coast Window & Energy Prod., Inc.*, No. 01-11-00080-CV, 2012 WL 151464, at *4-5 (Tex. App.—Hous. [1st Dist.] Jan. 19, 2012, no pet.) (mem. op.) (same); *De Santiago v. W. Tex. Cmty. Supervision & Corr. Dep't*, 203 S.W.3d 387, 396 (Tex. App.—El Paso 2006, no pet.) (same); *Johnson v. Scott Fetzer Co.*, 124 S.W.3d 257, 263 (Tex. App.—Fort Worth 2003, pet. denied) (same); *Thompson v. City of Austin*, 979 S.W.2d 676, 682 (Tex. App.—Austin 1998, no pet.) (same); *Guerrero v. Refugio Cnty.*, 946 S.W.2d 558, 566 (Tex. App.—Corpus Christi 1997, no writ) (same), *disapproved of on other grounds by Rennels*, 994 S.W.2d at 146-47; *Benavides v. Moore*, 848 S.W.2d 190, 193 (Tex. App.—Corpus Christi 1992, writ denied) (same), *with Staller v. Serv. Corp. Int'l*, No. 04-06-00212-CV, 2006 WL 3018039, at *1 (Tex. App.—San Antonio Oct. 25, 2006, no pet.) (mem. op.) (applying *Trevino* factors); *Sullivan v. Tex. Dep't of Criminal Justice*, No. 03-99-00149-CV, 2000 WL 140857, at *3 (Tex. App.—Austin Feb. 3, 2000, pet. denied) (not designated for publication) (applying *Trevino* factors as dicta because "single employer" test does not apply to governmental units); *Fields v. Teamsters Local Union No. 988*, 23 S.W.3d 517, 524-25 (Tex. App.—Hous. [1st Dist.] 2000, pet. denied) (applying same four factors as those contained in *Trevino* test).

Conversely, as recently as August 14, 2020, a federal court in the Southern District of Texas rejected a plaintiff's attempt to impose Section 161.134 liability on an entity that was not a hospital, mental health facility, or treatment facility. *See Hardy v. Oprex Surgery (Baytown) L.P.*, No. CV H-18-3869, 2020 WL 4756868, at *5 (S.D. Tex. Aug. 14, 2020). There, the plaintiff asserted a Section 161.134 claim against the hospital that employed her and a wealth management limited liability company ("ZT Wealth") after the hospital purportedly terminated her for reporting a violation of the federal Health Insurance Portability and Accountability Act.[15] *See id.* at *3-4. The plaintiff alleged the hospital and ZT Wealth shared common employees and were part of the same umbrella of companies. *Id.* at *4.

The defendants moved for summary judgment and argued ZT Wealth could not be held liable under Section 161.134 because it was not a hospital, mental health facility, or treatment facility. *Id.* at *5 (citing TEX. HEALTH & SAFETY CODE § 161.134(a)). The plaintiff offered no evidence to demonstrate ZT Wealth was in fact a hospital, mental health facility, or treatment facility, but instead asserted "it should be held liable nonetheless because it exercise[d] exorbitant control" over the

[15] The plaintiff also asserted claims under the federal Family and Medical Leave Act ("FMLA") and ADA based on other reasons. *See Oprex Surgery*, 2020 WL 4756868, at *3.

hospital.[16] *Id.* The court summarily disposed of the plaintiff's claim based on ZT Wealth's status alone. "As a wealth management limited liability company, ZT Wealth does not fall within the definition of hospital, mental health facility, or treatment facility." *Id.* (citing TEX. HEALTH & SAFETY CODE §§ 161.134(a), 241.003, 464.001, 571.003). Therefore, the court concluded ZT Wealth could not be held liable under Section 161.134 and granted summary judgment to ZT Wealth. *Id.*

While the court in *Oprex Surgery* avoided the need to address whether the single integrated enterprise theory applies to a Section 161.134 claim, the Beaumont Court of Appeals rejected a similar argument—asserted (on behalf of another client) by the same counsel who represents Dr. Janaki here—in the context of a workers' compensation retaliation claim. *See Luna v. Gunter Honey, Inc.*, No. 09-05-207-CV, 2005 WL 3490126, at *3 (Tex. App.—Beaumont Dec. 22, 2005, pet. denied) (mem. op.). In *Luna*, the court declined to adopt the *Trevino* single integrated enterprise test to impose liability on an entity that did not subscribe to the Texas workers' compensation system under Section 451.001 of the Texas Labor Code.

[16] The plaintiff also argued ZT Wealth was liable under an alter ego theory based on the four *Trevino* factors. *See Oprex Surgery*, 2020 WL 4756868, at *4 (citing to *Trevino* factors as outlined in *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 777 (5th Cir. 1997)). The court assumed without deciding that alter ego liability applied to claims under the ADA, FMLA, and Section 161.134, and held the plaintiff failed to produce sufficient evidence to overcome summary judgment where she produced no evidence that ZT Wealth was involved in the hospital's "daily employment decisions," let alone the decision to terminate her. *Id.*

Luna, 2005 WL 3490126, at *3 ("[E]xtending section 451.001 liability to nonsubscribers, entities held not subject to liability under the Act in decisions by the Texas Supreme Court, is beyond the role of an intermediate appellate court."). The Court should likewise decline to extend Section 161.134 liability here.

As noted above, Section 161.134 is an exception to the common law doctrine of employment at will. *See Dunn*, 2013 WL 4767528, at *3 (citing *Cazarez*, 937 S.W.2d at 453). The expansion in scope sought by Dr. Janaki would violate the well-settled principle that statutes that create exceptions to Texas's at-will employment doctrine "will be strictly construed in the sense that it will not be extended beyond its plain meaning or applied to cases not clearly within its purview." *Cazarez*, 937 S.W.2d at 453 (citation and internal quotation marks omitted) (analyzing claim brought under workers' compensation anti-retaliation law); *see also Hancock v. Express One Int'l, Inc.*, 800 S.W.2d 634, 636 (Tex. App.—Dall. 1990, writ denied) ("It is not for an intermediate appellate court to undertake to enlarge or extend the grounds for wrongful discharge under the employment-at-will doctrine. If such an exception is to be created, the Texas Supreme Court should do so." (citations omitted)).

This Court should reject Dr. Janaki's invitation to extend Section 161.134's scope to the facts of this case, which is devoid of an employee-employer relationship

between Dr. Janaki and a hospital, mental health facility, or treatment facility.[17] Accordingly, as Dr. Janaki was not an employee of a hospital, mental health facility, or treatment facility, Dr. Janaki's claims fail as a matter of law.

III. The Trial Court Did Not Err in Granting the Healthcare Defendants' Motions for Summary Judgment Because Dr. Janaki Failed to Raise a Genuine Issue of Material Fact.

Dr. Janaki submitted evidence that she claims created genuine issues of material fact regarding the "single integrated enterprise" factors. Open. Br. at 3-7, 20-23; CR 116, 118-120, 131, 133-135, 184, 186-188. However, the single integrated enterprise test is inapplicable to Dr. Janaki's Section 161.134 claim for the reasons stated above. Therefore, Dr. Janaki's summary judgment evidence should be disregarded as irrelevant to the limited questions of whether C.H. Wilkinson was a hospital, mental health facility, or treatment facility, or whether Dr. Janaki was an employee of either of the Hospital Defendants or the Cancer Center Defendants, as required for liability under Texas Health and Safety Code Section

[17] Ironically, Dr. Janaki contends the Healthcare Defendants' argument that the single integrated enterprise test is inapplicable to Section 161.134 claims represents an "attempt[] to divert the court's attention away from the issues of fact presented to the court . . . ." Open. Br. at 10; *see id.* at 30. Dr. Janaki misunderstands the Court's inquiry. As Section 161.134 is unambiguous, the Court is required to apply the plain meaning of the statute. *Jaster*, 438 S.W.3d at 562. Therefore, the only questions for the Court are (1) whether C.H. Wilkinson was a hospital, mental health facility, or treatment facility, and (2) whether Dr. Janaki was an employee of the Hospital Defendants or the Cancer Center Defendants. As the single integrated enterprise test is inapplicable to Dr. Janaki's Section 161.134 claims for the reasons outlined above, Dr. Janaki's attempts to raise a genuine issue of material fact with respect to the single integrated enterprise test represent the real diversion.

161.134(a). In the alternative, even if Dr. Janaki's summary judgment evidence were relevant, portions of the Affidavit submitted by Dr. Janaki should be disregarded as conclusory.

A. Dr. Janaki's Summary Judgment Evidence is Irrelevant, and Therefore Inadmissible.

The Texas Rules of Civil Procedure set forth the requirements for an affidavit offered in support of or in response to a motion for summary judgment. *See* TEX. R. CIV. P. 166a(f); *Ryland Grp., Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (discussing the rule). Supporting affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." TEX. R. CIV. P. 166a(f). Only relevant evidence is admissible. *See* TEX. R. EVID. 402 ("Irrelevant evidence is not admissible."). Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." TEX. R. EVID. 401. Lack of relevance is a substantive defect. *See McMahan v. Greenwood*, 108 S.W.3d 467, 498 (Tex. App.—Hous. [14th Dist.] 2003, pet. denied) ("[A]ny objections relating to substantive defects (such as lack of relevancy, conclusory) can be raised for the first time on appeal . . . .").

Dr. Janaki's summary judgment evidence, which consists of post-termination correspondence from C.H. Wilkinson to Dr. Janaki's counsel and an Affidavit from

Dr. Janaki, CR 116, 118-120, 131, 133-135, 184, 186-188, is entirely irrelevant to the questions of whether C.H. Wilkinson was a hospital, mental health facility, or treatment facility, or whether Dr. Janaki was an employee of the Hospital Defendants or the Cancer Center Defendants, as required for Dr. Janaki to pursue a cause of action under Section 161.134(a). As discussed above, the single integrated enterprise test is inapplicable to Section 161.134 claims. Therefore, the only relevant inquiries presented on this appeal are whether C.H. Wilkinson was a hospital, mental health facility, or treatment facility and whether Dr. Janaki was an employee of any of the Hospital Defendants or Cancer Center Defendants.

As it is undisputed that Dr. Janaki was an employee of C.H. Wilkinson, CR 43, and that C.H. Wilkinson was not a hospital, mental health facility, or treatment facility, *see generally* Open. Br. at 2-10, 12-30 (accepting without challenge C.H. Wilkinson's argument that it was not a hospital, mental health facility, or treatment facility), post-termination correspondence and Dr. Janaki's purported observations and beliefs regarding the relationships between the Hospital Defendants, Cancer Center Defendants, and C.H. Wilkinson are entirely irrelevant, and therefore, inadmissible. *See* TEX. R. EVID. 401; TEX. R. EVID. 402 ("Irrelevant evidence is not admissible."); *accord* TEX. R. CIV. P. 166a(f) (supporting affidavits shall set forth such facts as would be admissible in evidence). In the complete absence of ***any*** relevant summary judgment evidence capable of creating a genuine issue of material

fact, the trial court did not err in granting the Healthcare Defendants' Motions for Summary Judgment. *See Marshall v. Sackett*, 907 S.W.2d 925, 936 (Tex. App.—Hous. [1st Dist.] 1995, no writ) ("A motion for summary judgment cannot be denied based on the existence of an immaterial fact issue.").

B. In the Alternative, Portions of Dr. Janaki's Summary Judgment Evidence are Conclusory, and Therefore Inadmissible.

In the alternative, even if Dr. Janaki's summary judgment evidence were relevant, portions of such evidence are conclusory and, therefore, inadmissible. Although affidavits may be competent summary judgment evidence, conclusory affidavits are not enough to raise fact issues. *Ryland*, 924 S.W.2d at 122 (citation omitted). Subjective factual assertions or beliefs in affidavits are not competent summary judgment proof and must be disregarded. *Tex. Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312, 314 (Tex. 1994) (citations omitted); *see also Cuellar v. City of San Antonio*, 821 S.W.2d 250, 252 (Tex. App.—San Antonio 1991, writ denied) ("Statements in an affidavit which are mere conclusions or which represent the affiant's opinion are insufficient" (citation omitted)). Instead, the affiant must demonstrate she has personal knowledge of the facts asserted. *Radio Station KSCS v. Jennings*, 750 S.W.2d 760, 762 (Tex. 1988). Moreover, "legal conclusions and opinions made in an affidavit are not competent summary judgment evidence and are insufficient to raise an issue of fact in response to a motion for summary judgment." *Green v. Unauthorized Practice of Law Comm.*, 883 S.W.2d 293, 297

(Tex. App.—Dall. 1994, no writ) (citation omitted); *see also Grynberg v. M-I L.L.C.*, 398 S.W.3d 864, 874 (Tex. App.—Corpus Christi 2012, pet. denied) ("Conclusory statements in affidavits do not constitute competent summary-judgment evidence." (citations omitted)).

1. Paragraph Two of Dr. Janaki's Affidavit Contains a Conclusory Statement.

Paragraph Two of Dr. Janaki's Affidavit states as follows:[18]

> I was employed as a radiation oncologist through a contract with C.H. Wilkinson Physician Network, DBA Christus Physician's [sic] Group ("CPG"). I physically worked in cancer treatment centers owned and operated by the following hospitals: Christus Spohn Health Corpus Christi and Christus Spohn Health Corpus Christi Shoreline ("Spohn").

CR 118, 133, 186.

Dr. Janaki's assertion that the Hospital Defendants[19] owned and operated the Cancer Center Defendants is conclusory and does not equate to personal knowledge regarding which entity owned and/or operated the Cancer Center Defendants. *See Fort Worth Neuropsychiatric Hosp., Inc. v. Bee Jay Corp.*, 600 S.W.2d 763, 765 n.4 (Tex. 1980) ("It is well established that in cases where ownership is an issue in

[18] The objectionable portions of this Paragraph are highlighted in grey.

[19] Dr. Janaki's Affidavit refers to the hospitals that purportedly owned and operated the Cancer Center Defendants as "Christus Spohn Health Corpus Christi and Christus Spohn Health Corpus Christi Shoreline," and uses the shorthand "Spohn" for subsequent references. CR 118-120, 133-135, 186-188. CHRISTUS Spohn Health System is a separate entity from the Hospital Defendants, the Cancer Center Defendants, and C.H. Wilkinson, and is not a defendant in this suit. For the purposes of this appeal, however, the Healthcare Defendants assume Dr. Janaki intended to refer to the Hospital Defendants and not a separate entity.

dispute, the courts need not consider as competent evidence the legal conclusions of witnesses concerning ownership interests. Such ultimate questions are matters of law that are decided by the courts on the basis of facts presented in evidence." (citations omitted)).[20] Because Dr. Janaki has presented no evidence beyond her subjective belief regarding the Hospital Defendants' purported ownership or operation of the Cancer Center Defendants, such statement is inadmissible and should be disregarded.[21]

2. Paragraph Four of Dr. Janaki's Affidavit is Entirely Conclusory.

Paragraph Four of Dr. Janaki's Affidavit states as follows:

> According to this letter from CPG's Regional General Counsel on August 30, 2017, and my understanding of the relationship between CPG and Spohn, Spohn not only directed the firing of employees, such as in my case, but also controlled and directed the wages relative to RVU's and quality assurance bonuses.

CR 118, 133, 186.[22]

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[20] The Healthcare Defendants reiterate that none of Dr. Janaki's summary judgment evidence relates to an issue in dispute because it is undisputed that Dr. Janaki was not an employee of one of the three limited types of health care facilities subject to Texas Health and Safety Code Section 161.134. However, the Healthcare Defendants have objected to Dr. Janaki's statement out of an abundance of caution in the event the Court determines the single integrated enterprise theory applies and Dr. Janaki contends the purported ownership and operational relationship between the Hospital Defendants and the Cancer Center Defendants informs the *Trevino* inquiry.

[21] Likewise, any reliance by Dr. Janaki on such evidence in her briefs or at any oral argument should be disregarded. *See* Open. Br. at 5-7, 9-10, 16, 18, 20-23, 25, 28-30.

[22] Dr. Janaki's Affidavit refers to C.H. Wilkinson as "CPG." CR 118, 133, 186.

Dr. Janaki's assertion that the Hospital Defendants directed the firing of C.H. Wilkinson's employees, including Dr. Janaki, is unsupported by the August 30, 2017 letter referenced in the Affidavit, which indicates merely that "[t]he hospital" informed C.H. Wilkinson it no longer wanted Dr. Janaki to provide services under the C.H. Wilkinson contract. CR 116, 131, 184. The letter provides no indication whether the Hospital Defendants "directed" C.H. Wilkinson to terminate her. Dr. Janaki's subjective opinion or speculation as to the Hospital Defendants' role in her termination from C.H. Wilkinson is conclusory and, therefore, is not competent summary judgment evidence. *See Tex. Division-Tranter*, 876 S.W.2d at 314.

Furthermore, Dr. Janaki's "understanding" of the relationship between the Hospital Defendants and C.H. Wilkinson is conclusory and does not equate to personal knowledge that the Hospital Defendants purportedly directed the firing of employees and controlled and directed wages relative to RVUs and quality assurance bonuses. *See Ryland Grp.*, 924 S.W.2d at 122 (affiant's statement about his "understanding" was conclusory and did not raise a fact issue for summary judgment purposes). Because Dr. Janaki has no evidence beyond her own subjective opinion or speculation regarding the Hospital Defendants' purported role in C.H. Wilkinson's employment practices, Paragraph Four of the Affidavit is inadmissible

and should be disregarded.[23]

3. Paragraph Five of Dr. Janaki's Affidavit is Largely Conclusory.

Paragraph Five of Dr. Janaki's Affidavit states as follows:[24]

> During my time of employment with Plaintiffs [sic], the Hospitals and CPG were an integrated employer because they had common management, interrelation between operations, centralized control of labor relations, and common ownership or financial control. For example, a Human Resources official from Spohn was present during my termination meeting with CPG. And while my salary was determined by the contract with CPG, Spohn dictated wages based on performance relative to RVU's and quality assurance bonuses.

CR 118-119, 133-134, 186-187.

Dr. Janaki's assertion that the Hospital Defendants and C.H. Wilkinson were an "integrated employer" improperly states a legal conclusion in an apparent attempt to support her argument that the entities constitute a single employer under the single integrated enterprise test, which is inapplicable for the numerous reasons stated above. Dr. Janaki next testifies that the Hospital Defendants and C.H. Wilkinson were an integrated employer because they had "common management, interrelation between operations, centralized control of labor relations, and common ownership or financial control." CR 118-119, 133-134, 186-187. This assertion merely

[23] Likewise, any reliance by Dr. Janaki on such evidence in her briefs or at any oral argument should be disregarded. *See* Open. Br. at 5-7, 9-10, 14, 18-20, 22-25, 27-30.

[24] The objectionable portions of this Paragraph are highlighted in grey.

regurgitates the four factors of the single integrated enterprise test. *See Trevino*, 701 F.2d at 404. Legal conclusions made in an affidavit are not competent summary judgment evidence and are insufficient to raise a fact issue in response to a motion for summary judgment. *Green*, 883 S.W.2d at 297 (citation omitted).

Moreover, as with Paragraph Four, Paragraph Five is devoid of any support beyond Dr. Janaki's own subjective belief that the Hospital Defendants directed the wages of C.H. Wilkinson employees based on performance relative to RVUs and quality assurance bonuses. Because Dr. Janaki's legal conclusions and subjective opinions are not competent summary judgment evidence, *see Tex. Division-Tranter*, 876 S.W.2d at 314, the highlighted portions of Paragraph Five of the Affidavit are inadmissible and should be disregarded.[25]

4. Paragraph Six of Dr. Janaki's Affidavit Contains Several Conclusory Statements.

Paragraph Six of Dr. Janaki's Affidavit states as follows:[26]

> CPG employs physicians through employment contracts, such as myself, who treat patients at Spohn hospital facilities. Other hospital employees are employed by Spohn. These two entities are so integrated to where patient care would not be possible without the other. For example, a patient's flow through receiving treatment is as follows . . . . Additionally, Spohn hospitals can only collect money and process billing under a CPG physician Medicare and NPI number who provides services to the patients. Spohn cannot operate without CPG physicians,

[25] Likewise, any reliance by Dr. Janaki on such evidence in her briefs or at any oral argument should be disregarded. *See* Open. Br. at 3-6, 9-10, 14, 18-25, 27-30.

[26] The objectionable portions of this Paragraph are highlighted in grey.

> and CPG physicians would not have patients and a place to treat them if not for Spohn. The two entities have operations that are so interrelated that they would not be able to function without the other.

CR 119, 134, 187.

Dr. Janaki's assertions that the two entities are so integrated or interrelated that patient care would not be possible without the other and that the two entities would not be able to function without the other, as well as her assertion that the Hospital Defendants cannot operate without C.H. Wilkinson physicians, are purely conclusory and merely represent Dr. Janaki's subjective opinion. *See Tex. Division-Tranter*, 876 S.W.2d at 314. Moreover, Dr. Janaki has not established herself as an expert on hospital or physician group operations, and lacks the expertise to opine on whether the Hospital Defendants or C.H. Wilkinson could or could not operate without each other.

Similarly, Dr. Janaki's assertions that C.H. Wilkinson physicians would not have patients and a place to treat them if not for the Hospital Defendants, and that the Hospital Defendants can only collect money and process billing under a C.H. Wilkinson physician Medicare and NPI number, are conclusory and devoid of any facts in support. Dr. Janaki was not an officer of C.H. Wilkinson and has otherwise not established herself as possessing personal knowledge regarding C.H. Wilkinson's operations beyond what she personally observed or experienced. Dr. Janaki's assertions also presume, without any support, that the only physicians

practicing at the Hospital Defendants' facilities are employed by C.H. Wilkinson. Because Dr. Janaki's conclusions and subjective opinions are not competent summary judgment evidence, *see Tex. Division-Tranter*, 876 S.W.2d at 314, the highlighted portions of Paragraph Six of the Affidavit are inadmissible and should be disregarded.[27]

C. The Remainder of Dr. Janaki's Summary Judgment Evidence Fails to Raise a Genuine Issue of Material Fact.

The remainder of Dr. Janaki's summary judgment evidence wholly fails to raise a genuine issue of material fact regarding Dr. Janaki's employment status with the Hospital Defendants or the Cancer Center Defendants even if the *Trevino* single integrated enterprise test applies. Dr. Janaki is left with: (1) C.H. Wilkinson's statement in the August 30, 2017 letter that "[t]he hospital informed [C.H. Wilkinson] that it no longer wanted Dr. Janaki to provide services under the [C.H. Wilkinson] contract[,]" CR 116, 118, 131, 133, 184, 186; (2) Dr. Janaki's statement that a human resources official from the Hospital Defendants was present during her termination meeting with C.H. Wilkinson, CR 119, 134, 187; (3) Dr. Janaki's

[27] Likewise, any reliance by Dr. Janaki on such evidence in her briefs or at any oral argument should be disregarded. *See* Open. Br. at 3-7, 9-10, 14, 18, 20-24, 29-30.

statement that her salary was determined by the contract with C.H. Wilkinson,[28] CR 119, 134, 187; and (4) Dr. Janaki's statements describing the typical interaction between employees of the Hospital Defendants and C.H. Wilkinson physicians when treating patients at the Hospital Defendants' facilities. CR 119, 134, 187. Such evidence falls woefully short of establishing the four *Trevino* factors.

With respect to the first *Trevino* factor, "interrelation of operations," routine interaction between employees of different companies is not enough. "The interrelation of operations element of the single employer test ultimately focuses on whether the parent corporation excessively influenced or interfered with the business operations of its subsidiary, that is, whether the parent actually exercised a degree of control beyond that found in the typical parent-subsidiary relationship." *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 778 (5th Cir. 1997) (citations omitted). The "hallmark" of interrelated operations is "[a]ttention to detail, not general oversight. . . ." *Id.* (citation omitted). Along these lines, relevant factors suggesting the existence of interrelated operations include evidence that the parent:

> (1) was involved directly in the subsidiary's daily decisions relating to production, distribution, marketing, and advertising; (2) shared employees, services, records, and equipment with the subsidiary; (3) commingled bank accounts, accounts receivable, inventories, and credit

[28] This statement is, of course, entirely consistent with the evidence submitted by the Healthcare Defendants showing C.H. Wilkinson paid Dr. Janaki and that neither the Hospital Defendants nor the Cancer Center Defendants controlled or directed C.H. Wilkinson with respect to employed physicians' salaries, wages, or other personnel issues. CR 54, 76, 80, 101, 105.

> lines; (4) maintained the subsidiary's books; (5) issued the subsidiary's paychecks; or (6) prepared and filed the subsidiary's tax returns.

Id. at 778 (citations omitted). Dr. Janaki's summary judgment evidence entirely fails to raise a fact issue with respect to any of these factors.

To determine the second *Trevino* factor, "centralized control of labor relations," courts ask the following question: "What entity made the final decisions regarding employment matters related to the person claiming discrimination?" *Trevino*, 701 F.2d at 404 (citation omitted). Contrary to Dr. Janaki's assertion, that the Hospital Defendants informed C.H. Wilkinson they no longer wanted to use Dr. Janaki's services in no way equates to a "final decision" to terminate Dr. Janaki's contract with C.H. Wilkinson. Indeed, a Western District of Texas court addressing federal discrimination claims found, as recently as March 2020, that a single integrated enterprise did not exist between a hospital and a physician group even though the hospital exercised its right to request the physician-plaintiff's removal from the hospital. *See Perry v. Pediatric Inpatient Critical Care Servs., P.A.*, --- F. Supp. 3d ----, No. SA-18-CV-404-XR, 2020 WL 1248263, at *14 (W.D. Tex. Mar. 16, 2020) ("Although the Hospital retained the right to request Plaintiff's removal, and exercised that right, there is simply insufficient evidence for a reasonable factfinder to conclude that the Hospital was so involved in the daily employment decisions of [physician group] as to justify treating the two [entities] as a single employer." (internal quotation marks omitted)).

With respect to the third *Trevino* factor, "common management," Dr. Janaki points to the allegations in her Petition that she "held meetings with management of both [C.H. Wilkinson] and the Hospitals in reporting the conduct she thought was Medicare fraud while working at the Cancer Centers." Open. Br. at 22 (citing CR 43-51). Of course, pleadings are not competent summary judgment evidence.[29] *See Laidlaw Waste Sys. (Dall.), Inc. v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995) (citation omitted). Therefore, Dr. Janaki's assertion that she met with management of both C.H. Wilkinson and the Hospital Defendants in reporting purported Medicare fraud is no evidence at all.

Likewise, Dr. Janaki's statement that a human resources official from the Hospital Defendants was present during her termination meeting with C.H. Wilkinson utterly fails to show that C.H. Wilkinson, the Hospital Defendants, and/or the Cancer Center Defendants shared common management. *Cf. Johnson*, 868 F. Supp. at 860 (finding "common management" factor of *Trevino* test was met where agreement between hospital and physician group appointed hospital as "its sole and exclusive agent for the management and administration of the business functions and services" related to physician group's provision of medical services).

[29] One exception to this rule is where a defendant moves for summary judgment on the ground that a plaintiff has pled facts that affirmatively negate her cause of action. *See Saenz v. Family Sec. Ins. Co. of Am.*, 786 S.W.2d 110, 111 (Tex. App.—San Antonio 1990, no writ). As explained above, the Healthcare Defendants moved for summary judgment, in part, based on Dr. Janaki's concession in her Petition that she was an employee of C.H. Wilkinson. CR 43.

Finally, with respect to the fourth *Trevino* factor, "common ownership or financial control," even if Dr. Janaki's conclusory statement that the Hospital Defendants are required to collect money and process billing under a C.H. Wilkinson physician Medicare and NPI number were held to be admissible, such statement fails to establish ***any*** common ownership or financial control between one or more of the Healthcare Defendants. Indeed, Dr. Janaki has failed to even allege C.H. Wilkinson or the Hospital Defendants owned the other, or that C.H. Wilkinson or the Hospital Defendants exercised any financial control over the other.[30] *Cf. Johnson*, 868 F. Supp. at 860 (finding "financial control" factor of *Trevino* test was met where agreement between hospital and physician group gave hospital responsibility and commensurate authority to provide "business, administrative and full management services" for physician group, including billing and collection services, financial consulting, financial record keeping and reporting, preparation of financial statements and income tax returns, and cash management services).

[30] Even if Dr. Janaki's statement that the Hospital Defendants owned and operated the Cancer Center Defendants (CR 118, 133, 186) were admissible, such assertion is of no moment. For Dr. Janaki to overcome summary judgment, Dr. Janaki must raise an issue of material fact with respect to whether the Hospital Defendants and/or Cancer Center Defendants should be considered single employers with ***C.H. Wilkinson***, Dr. Janaki's actual employer. *See Schweitzer*, 104 F.3d at 764 (where "questions remain whether a second (or additional) defendant is sufficiently connected to the ***employer-defendant*** so as to be considered a single employer, a *Trevino* analysis should be conducted." (emphasis added)).

In summary, even if the single integrated enterprise theory applies—which the Healthcare Defendants vehemently deny—Dr. Janaki's summary judgment evidence wholly fails to raise a genuine issue of material fact as to whether the Healthcare Defendants should be considered a single employer for purposes of Section 161.134 liability.

CONCLUSION

For the reasons stated above, Appellees C.H. Wilkinson Physician Network, CHRISTUS Spohn Hospital Corpus Christi, CHRISTUS Spohn Hospital Corpus Christi – Shoreline, CHRISTUS Spohn Cancer Center – Calallen, and CHRISTUS Spohn Cancer Center – Shoreline respectfully request that this Court affirm the trial court's orders granting the Healthcare Defendants' Motions for Summary Judgment. The Healthcare Defendants further request all other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), the undersigned counsel—in reliance upon the word count of the computer program used to prepare this document—certifies that this brief contains 13,460 words, excluding the words that need not be counted under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ *Daphne Andritsos Calderon*
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of Appellees' Response Brief was served by electronic filing in compliance with Texas Rule of Appellate Procedure 9.5 on August 25, 2020, upon:

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INDEX TO APPENDIX

Appellees' Appendix

Tab 1

Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 2. Health
Subtitle H. Public Health Provisions
Chapter 161. Public Health Provisions (Refs & Annos)
Subchapter L. Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities (Refs & Annos)

V.T.C.A., Health & Safety Code § 161.131

§ 161.131. Definitions

Effective: April 2, 2015
Currentness

In this subchapter:

(1) “Abuse” has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(2) “Comprehensive medical rehabilitation” means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) “Hospital” has the meaning assigned by Section 241.003.

(4) “Illegal conduct” means conduct prohibited by law.

(5) “Inpatient mental health facility” has the meaning assigned by Section 571.003.

(6) “License” means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) “Mental health facility” has the meaning assigned by Section 571.003.

(8) “Neglect” has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) “State health care regulatory agency” means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Credits

Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993. Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0473, eff. April 2, 2015.

V. T. C. A., Health & Safety Code § 161.131, TX HEALTH & S § 161.131
Current through the end of the 2019 Regular Session of the 86th Legislature

End of Document

V.T.C.A., Health & Safety Code § 161.132

§ 161.132. Reports of Abuse and Neglect or of Illegal, Unprofessional, or Unethical Conduct

Effective: April 2, 2015
Currentness

(a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the

duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) The executive commissioner by rule and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, “abuse” includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Credits

Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, § 7.41, eff. Sept. 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0474, eff. April 2, 2015.

Notes of Decisions (1)

V. T. C. A., Health & Safety Code § 161.132, TX HEALTH & S § 161.132
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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 2. Health
Subtitle H. Public Health Provisions
Chapter 161. Public Health Provisions (Refs & Annos)
Subchapter L. Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities (Refs & Annos)

V.T.C.A., Health & Safety Code § 161.133

§ 161.133. Inservice Training

Effective: April 2, 2015
Currentness

(a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year.

Credits
Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993. Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0475, eff. April 2, 2015.

V. T. C. A., Health & Safety Code § 161.133, TX HEALTH & S § 161.133
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 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Limited on Preemption Grounds by Castillo v. Brownsville-Valley Regional Medical Center, Inc., Tex.App.-Corpus Christi, Dec. 19, 2013

V.T.C.A., Health & Safety Code § 161.134

§ 161.134. Retaliation Against Employees Prohibited

Effective: April 2, 2015
Currentness

(a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Credits

Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993. Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0476, eff. April 2, 2015.

Notes of Decisions (12)

V. T. C. A., Health & Safety Code § 161.134, TX HEALTH & S § 161.134
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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 2. Health
Subtitle H. Public Health Provisions
Chapter 161. Public Health Provisions (Refs & Annos)
Subchapter L. Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities (Refs & Annos)

V.T.C.A., Health & Safety Code § 161.135

§ 161.135. Retaliation Against Nonemployees Prohibited

Effective: April 2, 2015
Currentness

(a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Credits

Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993. Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0477, eff. April 2, 2015.

Notes of Decisions (10)

V. T. C. A., Health & Safety Code § 161.135, TX HEALTH & S § 161.135
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V.T.C.A., Health & Safety Code § 161.136

§ 161.136. Brochure Relating to Sexual Exploitation

Currentness

(a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Credits
Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993.

V. T. C. A., Health & Safety Code § 161.136, TX HEALTH & S § 161.136
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V.T.C.A., Health & Safety Code § 161.137

§ 161.137. Penalties

Currentness

In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Credits

Added by Acts 1993, 73rd Leg., ch. 573, § 1.01, eff. Sept. 1, 1993.

V. T. C. A., Health & Safety Code § 161.137, TX HEALTH & S § 161.137
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